*** THE HON'BLE SRI JUSTICE J.CHELAMESWAR**

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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+ WRIT PETITION NO : 9073 of 2003

% Dated 23-12-2005

1 V.V. Subba Rao, S.G. Teacher,
M.P. Elementary School, Bhartipudi, Bapatla Mandal,
Guntur District.
and five others Peittioners

Vs.

$ 1The Commissioner and Director of School Education,
Govt. of A.P., Hyderabad.
and 200 others

.....RESPONDENT(S)

! Counsel for the Petitioner: Mr. C.V.R. Rudra Prasad

^ Counsel for the Respondents: Mr. Kasajaganmohan Reddy

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> HEAD NOTE:

? Cases referred

2003(6) ALD 522 (DB)

2AIR 1956 SC 520

3(1997)1 SCC 253

41993 Suppl. (3) SCC 9

5(1990)1 SCC 288

6AIR 1974 SC 1631

7AIR 1984 SC 161

8AIR 1965 SC 491

91973 Lab.I.C. 139 (APHC FB)

10(1997)7 SCC 592

[11](1998)7 SCC 66

[12](1995)2 SCC 326

[13]AIR 1971 SC 1021

[14]AIR 1979 SC 621

[15] AIR 1966 SC 1942

[16]AIR 1967 SC 1910

[17](1990)3 SCC 157

[18](1992)2 SCC 36

[19]AIR 1974 SC 1

[20]AIR 1967 SC 1889

[21](1995)1 SCC 745

[22](1995)1 SCC 745

[23](1995)1 SCC 727

[24](1991)1 SCC 761

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.Nos.9073, 14734 of 2003, 21864 of 2004, 20226, 23343, 23344, 23995 and 24607 of 2005

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

In these batch of writ petitions, the petitioners challenge the common order of the A.P. Administrative Tribunal, (hereinafter referred to as 'the Tribunal'), in

O.A.No.9635 of 2002 and batch dated 04.12.2002, wherein it was held that persons who had obtained the single subject certificate in english from the Dr.B.R. Ambedkar University were qualified to be considered for promotion to the post of school assistant (english), and since this certificate was in addition to the bachelors degree which the respondents herein, had already obtained from the University, the requirement of the rule, of possessing a bachelors degree, (with english as the main or one of the optional subjects), had been satisfied. The Tribunal further held that the clarification issued, by the Commissioner and Director of School Education, to the statutory rules was valid in as much as the Commissioner, as the head of the department, had the right to clarify the rules. Aggrieved by the order of the Tribunal, candidates who possess a bachelors degree with english, as the main or one of the optional subjects, have approached this court.

Since facts, both prior to and subsequent to the order of the Tribunal dated 4-12-2002, have been stated in detail in W.P.No.20226 of 2005, it would suffice if the facts referred to therein are taken note of. The statutory rules and government orders in force, during the relevant period, are also being referred to.

Petitioners, secondary grade teachers (SGTs) selected in DSC 1996-1998 and appointed in Karimnagar District, claim to have put in between 7 to 9 years of service and to possess M.A. in English and B.Ed. in English methodology, which is amongst the prescribed educational qualifications, for appointment to the post of school assistant (english), under the A.P. School Education Subordinate Service Rules as amended from time to time.

The A.P. Educational Subordinate Service Rules, notified in G.O.Ms.No.278 dated 20.6.1983, consisted of various classes, categories and grades of officers of the education department including that of school assistants grade II. Rule 2-A thereof, related to appointments and prescribed the method of recruitment in various categories. The method of recruitment to the post of school assistant grade II was both by direct recruitment and promotion. Rule 3 related to conditions of appointment and, under sub-rule (a) thereof, promotion was required to be made on grounds of merit and ability, seniority being considered only where merit and ability were approximately equal. Rule 7 related to qualification as to age. Rule 8, which related to other qualifications, provided that no person shall be eligible for appointment by any method specified in Rule 2(a), unless he possessed the qualification prescribed in column (2) of Annexure II. For school assistant grade II, the qualification

prescribed, for appointment otherwise than by direct recruitment, was a degree of B.A, B.Sc. or B.O.L. of a University in the State and a teaching degree, and for direct recruitment it was B.A, or B.O.L of a University in the State in such subject or language as may be necessary, in the opinion of the Director of Public Instruction and teaching degree of a University in the State.

In supersession of the rules in G.O.Ms.No.278 dated 20.06.1983, the A.P. School Education and Subordinate Rules were made and notified in G.O.Ms.No.40 dated 7.2.1992. Rule 2(2) thereof provided that the service shall consist of posts specified thereunder and under Class-C in category 1(b) were the posts of school assistants. The method of appointment was prescribed in Rule 3 and for the posts of school assistants it was both by (a) direct recruitment and (b) by promotion from qualified persons based on the combined seniority of the following categories in government and panchayat raj institutions:

i. Secondary Grade Teachers;

ii. Language Pandits Grade II;

iii. Specialist Teachers and Instructors in classes F.G.H. and I of the rules;

Rule 5 related to qualifications and for the posts of school assistants, by direct recruitment or by promotion or by appointment by transfer, the qualification prescribed was that the candidates must possess a bachelors degree in any subject and a B.Ed. degree from a University in India established or incorporated by or under a Central Act, State Act or Provincial Act or an Institution recognized by the University Grants Commission or an equivalent qualification.

These rules, in G.O.Ms.No.40 dated 07.02.1992, were superseded by the Andhra Pradesh School Educational Subordinate Service Rules, in G.O.Ms.No.538 dated 20.11.1998, made in exercise of the powers conferred by Sections 78 and 99 of the A.P. Education Act 1982 and the proviso to Article 309 of the Constitution of India. Rule 2(ii) thereof provided that the service shall consist of the posts prescribed thereunder and under Category 1 (a) were the posts of school assistants. The method of appointment was (i) by direct recruitment, (ii) by promotion from categories 1 to 11 of Class III and (iii) recruitment by transfer from junior assistants and equivalent cadres of APMS under the control of the Director of School Education. The unit of appointment was the district and the qualifications prescribed for the

category of school assistant, by promotion, direct recruitment or recruitment by transfer, was that the candidate must possess:

> "A Bachelor's Degree in the subject concerned and a B.Ed. Degree in the subject concerned from a University in India established or incorporated by or under a Central Act, State Act or Provincial Act or an institution recognized by the University Grants Commission or equivalent qualification.
>
> Note: In schools having one section in each class from VIII to X class there will be three school assistants posts. They have to be designated as School Assistants (Maths), School Assistant (Science) and School Assistant (Social Studies). The qualifications for these posts are as given below.
>
> School Assistant (Maths) : He should have mathematics as one of the subjects when three optional subjects are equal or as main subject when main system exists. He must possess B.Ed. with Maths, as one of the methodology subject.
>
> School Assistant (Science): - Two of the following subjects in his graduation and B.Ed. with Natural Science/Physical Science as one of the methodology subjects.
>
> (Chemistry, Physics, Botony, Zoology)
>
> School Assistant (Social Studies): B.A./B.Com. with one of the following subjects in the graduation (Politics, Economics, History, Public Administration, Geography) and B.Ed., with Social Studies as one of the methodology subjects.
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> Note: - In the case of high schools having multiple sections from 8 to 10 classes a cycle of school assistant (maths) School Assistant (Science) and School Assistant (Social Studies) shall be followed. In case two school assistants (Science) exist in a school one post may be filled by a person having Natural Science as one of the methodology subject and the second one shall be filled by a person having physical Science as one of the methodology subject in B.Ed. course."

While the earlier rules, including the rules notified in G.O.Ms.No. 538 dated 20.11.1998, provided for appointment to the posts of School Assistants both by way of direct recruitment and promotion, separate rules, called the "A.P. Direct Recruitment of Teachers (Scheme of Selection) Rules, 2000", were notified in G.O.Ms.No.72 dated 3.7.2000, for appointment by direct recruitment to all categories of teachers in government, zilla parishad, mandal parishad schools etc. Rule 3 related to qualifications and method of recruitment and sub-rule(1) thereof read as under:

> "1. The candidate for selection to these posts shall possess the academic and professional qualifications prescribed in column (3) of Annexure to Special Rules for the Andhra Pradesh School Educational subordinate Services, issued in G.O.Ms.No.538 Education (Ser.II) Department, dt.20.11.1998, as may be amended from time to time.

2) The Recruitment shall be through a selection process consisting of Written Test, proportionate weightage to the marks secured in academic and professional qualifications prescribed for the post and other criteria stipulated by the Government from time to time. The total marks shall be 100. The details of allocation of marks for written test and weightages to different aspects for different categories of posts shall be as decided by the Government from time to time"

The Rules, in G.O.Ms.No.538 dated 20.11.1998, were amended in G.O.Ms.No. 49 dated 14.5.2002 whereunder posts of school assistants were classified into five categories i.e., (i) school assistant (mathematics), (ii) school assistant (physical science), (iii) school assistant (biological science), (iv) school assistant (social studies) and (v) school assistant (english). The qualification prescribed therein, for school assistant (english), was a bachelor's degree with english as the main subject or one of the optional subjects or a post graduate degree in english and a B.Ed degree with english as a methodology subject.

The constitutional validity of the rules, as amended by G.O.Ms.No.49 dated 14.5.2002, fell for consideration before a Division Bench of this Court in W.P.Nos.17207 of 2002 and batch. While dismissing the batch of writ petitions, by order dated 9.10.2002, this court held that the government had sought to upgrade the secondary grade teachers posts to that of school assistants to provide subject-wise teachers in High Schools to impart quality instruction to the students and to achieve the required educational standards had prescribed subject-wise qualifications, and viewed from this perspective, when larger interest of the student community was sought to be served, individual interest should pave way for ensuring such larger interest. This judgment of the Division Bench of this Court was not noticed by the Tribunal in the impugned O.A.No.9635 of 2002 and batch.

The Commissioner and Director of School Education, vide Memo Rc.No.3281/C3-1/2002 dated 12.10.2002, issued clarifications, for conducting of promotion counseling to the posts of school assistants and its equivalent cadres, which all the District Educational Officers in the State were requested to follow. On the question as to whether candidates, who had obtained certificates from Dr.B.R.Ambedkar University, to the effect that they had passed english in degree course as a single subject, were eligible for promotion, it was clarified that such candidates could be considered for promotion as school assistants (english) if they had studied english

as one of the methodology subjects in their B.Ed. course, as they were eligible as per Rules.

Aggrieved by the said clarification, issued by the Commissioner in proceedings dated 12.10.,2002, O.A.9635 of 2002 was filed before the A.P. Administrative Tribunal. Similar relief was sought in O.A.No.9847 of 2002 and 9849 of 2002. All the O.As. were dismissed by the Tribunal, by its order dated 4.12.2002, holding that the clarification issued by the Commissioner was legal and just and that, as the Head of the Department, the Commissioner had the power to clarify the rules. Challenging the order in O.A.No.9847 of 2002 dated 4.12.2002, W.P.No.9073 of 2005 was filed before this court.

The Association of Indian Universities, New Delhi, vide letter dated 3.1.2003, clarified that the certificate issued by Dr.B.R.Ambedkar Open University, Hyderabad of having passed english literature at the bachelor level may not be considered as equivalent to a degree in english literature. The University Grants Commission, vide proceedings dated 23.1.2003, informed that the certificate of english literature (four papers) issued by the Dr.B.R. Ambedkar Open University was not equal to a degree in english literature and even B.Sc./B.Com. degree holders, appearing in four papers in english literature, could not be considered as degree holders in english literature.

In G.O.Ms.No.71 dated 7.6.2003, the rules in G.O.Ms.No.538 dated 20.11.1998, were amended. The amendment was an addendum under Note to Rule (1) which read as under:

> "In the case of teachers recruited before 14.5.2002, promotion to the post of School Assistant shall also be considered on the basis of their B.Ed., qualification in the subject methodology relevant to the post. However, their promotion will be subject to their acquiring the required qualifications as mentioned in these rules before 1.7.2005. If they do not acquire such qualifications by this date, they will be reverted to their original posts
>
> After 01.07.2005, only those teachers, who possess the qualifications prescribed in these rules for the posts of School Assistants in both the Degree and B.Ed. shall be considered for promotion."

In **M. KESAVULU V. STATE OF A.P.** (Judgment in W.P.No. 11325 of 2000 and batch dated 18.09.2003), while holding that the rules in G.O.Ms.No.538 was not sustainable in law and was liable to be set aside, this Court quashed

G.O.Ms.No.538, Education Department dated 26.11.1998 restoring the rules framed by the Government in G.O.Ms.No.278 dated 20.6.1983.

The rules in G.O.Ms.No. 72 dated 03.07.2000 were amended and notified in G.O.Ms.No.136 dated 13.11.2003. The qualification prescribed thereunder, for school assistant (english), was that the candidate must possess a bachelor's degree with english as the main subject or one of the three optional subjects or a post graduate degree in english and a B.Ed. degree with english as a methodology subject.

In response to the clarification sought by the University Grants Commission, in its letter dated 15.10.2003, the Dr. B.R. Ambedkar Open University, vide letter dated 13.11.2003, informed that it did not award a degree, for students who had passed in a single subject, but had only issued a pass certificate and that the students who registered in a single subject, already held a Bachelor's or Master's degree either from their University or from other universities, the facility was provided only to acquire knowledge in the area of their interest and that the university did not discriminate between degree holders of Dr.B.R. Ambedkar university and degree holders of other recognized universities. It was clarified that after successful completion of study, a student who registered in a single subject would not be awarded a degree, but would be given a marks certificate to the effect that he had passed in the subject he had registered.

The Commissioner and Director of School Education, vide proceedings in R.C.No.2505/RC-3/2003 dated 5.2.2004, informed all the district educational officers in the State that, for the post of school assistants for DSC – 2003, applications received from candidates, who had obtained the single subject pass certificate in the relevant subject from the Dr.B.R. Ambedkar Open University, Hyderabad, in addition to the bachelor's degree and B.Ed., as per G.O.Ms.No.136 Edn. Dated 13.11.2003, should be accepted.

Contending that the clarification issued by the Commissioner, in proceedings dated 5.2.2004, was contrary to the qualifications prescribed, under the rules in G.O.Ms.No.136 dated 13.11.2003, for appointment to the post of school assistants (english) by direct recruitment, O.A.No.2935 of 2004 was filed before the A.P. Administrative Tribunal and the Tribunal, while admitting the said O.A., passed an interim order on 26.5.2004 directing that if the respondents propose to appoint

school assistants in english, they shall do so as per the rules in force.

The Director of School Education, vide letter dated 14.2.2005, requested the government to issue necessary amendment to the rules notified in G.O.Ms.No.136 dated 13.11.2003. The government, on clarification being sought for acceptance of the single subject certificate, informed the director of school education, vide memo dated 05.03.2005, that the proposal had been examined and that the established procedure should be implemented without any diversion in the matter, as the rules stood on 13.11.2003 (i.e., the rules notified in G.O.Ms.No. 136 dated 13.11.2003). This was reiterated by the government in its memo No.2368/Ser.VII/2005-2 dated 27.4.2005 whereby the director of school education was requested to follow the orders in the earlier memo dated 5.3.2005, and to implement the established procedure without any diversion in the matter, as the rules stood on 13.11.2003.

The A.P. School Education Teachers and other Employees (Abolition of existing service cadres and Regulation of recruitment and conditions of service) Ordinance 2005 (A.P. Ordinance 12 of 2005) came into force with effect from 30.6.2005. It applies to all teachers working in government, mandal parishad and zilla parishad schools etc. Section 3 abolished the existing cadre of teachers and, under Section 5(1), restructured school education service cadres for teachers working in government, mandal parishad and zilla parishad schools was constituted. Section 9 gave overriding effect to the provisions of the Ordinance notwithstanding anything inconsistent thereto contained in any other law for the time being in force. Section 12 empowered the government, by notification, to make rules for carrying out all or any of the purposes of the Act.

In exercise of the powers conferred by Sections 5 and 12 of A.P. Ordinance 12 of 2005, the A.P. School Educational Subordinate Service Rules were made and notified in G.O.Ms.No.96 dated 25.7.2005. Rule 2(ii) thereof provides that the service shall consist of classes and categories specified thereunder and in Class I category V are the school assistants (english). Rule 3 relates to the method of appointment and sub-rule (1) thereof provides that the method of appointment shall be as specified in columns (4) and (5). For the posts of school assistants (english) the method of recruitment is (1) by direct recruitment; (2) by promotion from categories 1 to 25 of Class III; and (3) recruitment by transfer from junior assistants and equivalent cadres. The qualifications prescribed for appointment to the post of school assistant (english) is a bachelors degree with english as the main subject or one of the

optional subjects or a post graduate degree in english and a B.Ed. degree with english/post graduate certificate in teaching of english/post graduate diploma in teaching of english/as a methodology subject.

The government fixed the schedule, for promotions counseling for the year 2005-2006 for the post of school assistants (english), as the 1st and 2nd September, 2005. The district educational officers were directed to prepare the seniority list of secondary grade teachers who were eligible and qualified to be promoted to the post of school assistants (english), strictly in accordance with the educational qualifications prescribed in the rules notified in G.O.Ms.No.96 dated 25.7.2005. The seniority list did not include teachers who had obtained the single subject certificates in english from the Dr.B.R. Ambedkar University. Aggrieved thereby those teachers, who had obtained the single subject certificate in English from the Dr.B.R. Ambedkar University, approached the A.P. Administrative Tribunal and the Tribunal, while admitting the O.As., passed interim orders directing that the cases of such teachers be considered in terms of the judgment passed in O.A.No.9847/02 dated 4.12.2002. The promotions counseling scheduled to be held on 1st and 2nd September, 2005 was postponed indefinitely.

The government, vide G.O.Rt.No.556 dated 4.10.2005, permitted the director of school education to appoint candidates having a bachelors degree, B.Ed. and the single subject certificate with four papers in the relevant subject at the bachelor's degree level from Dr.B.R.Ambedkar Open University, to the posts of school assistants (language) in the relevant subject for DSC-2003, in relaxation of G.O.Ms.No.136 dated 13.11.2003, subject to certain conditions which included that the services of those candidates would be terminated if they did not acquire the qualifications prescribed for the post, as per G.O.Ms.NO.136 dated 13.11.2003, within a period of 5 years from the date on which the appointment order was issued and that they shall be eligible for regularization only after the qualifications, as prescribed under the rules, were acquired by them. Clause 6 specifically provides that these orders shall apply for DSC 2003 candidates only.

The proceedings of the director of school education dated 4.10.2005 contains an extract of a copy of the memo No.18103/Ser.VI-1/2005 dated 3.10.2005. Clause 7

thereof relates to the single subject certificate course of Dr.B.R. Ambedkar Open University, Hyderabad/any other University and provides that the said certificate, issued after completion of the single subject course, was not a degree and that the single subject certificate holders of Dr.B.R. Ambedkar Open University or any other University were not eligible for promotion to the post of school assistant in the concerned subject.

Sri V. Jagapathi and Sri C.V.R. Rudra Prasad, learned counsel for the petitioners, would submit that since the secondary grade teachers, who had obtained the single subject certificate in english from Dr.B.R. Ambedkar University, did not possess the educational qualifications prescribed under the statutory rules, in G.O.Ms.No.96 dated 25.7.2005, neither should they have been included in the seniority list for promotion to the post of school assistant (english) nor their certificates treated as equivalent to a degree in english. Learned Counsel would submit that the clarification issued by the Commissioner and the memos issued by the government, which are, at best, akin to executive instructions, cannot prevail over statutory rules nor could there be any deviation from or relaxation of the statutory rules in force. Learned counsel would refer to the clarification issued by the University Grants Commission, that the certificate course in english offered by Dr.B.R. Ambedkar University was not equivalent to a degree in english literature, and submit that the order of the Tribunal, in O.A.No.9847/2002 dated 4.12.2002, treating such certificates as equivalent to a degree in english literature, was contrary to law and as a consequence thereof, even a candidate, who had secured the minimum pass marks in his graduation in commerce, on obtaining the single subject in english from Dr.B.R. Ambedkar University, would be treated as equivalent to a graduate in english literature. Learned counsel would contend that english is an important subject taught at the higher secondary level, that educational standards cannot be diluted by appointing teachers not possessing the statutorily prescribed educational qualifications, and that the certificate issued by Dr.B.R. Ambedkar University has been the subject matter of widespread criticism as it has the effect of diluting the standards of education in government schools.

Sri S. Ramachandra Rao, learned Senior Counsel, appearing on behalf of some of the respondents, would submit that they were all graduates in subjects other than english, they had english as the B.Ed. methodology and had undergone intensive training in english from the B.R. Ambedkar Open University. According to the

learned Senior Counsel, even by the year 2002 more than 1500 teachers with a bachelors degree, B.Ed. and the single subject certificate in english from the Dr. B.R. Ambedkar University had already been promoted, their services regularized as school assistants and that these employees were working regularly for the past three years. He would refer to the proceedings of the Director dated 4.10.2005 wherein it was held that the single subject certificates holders were not eligible for promotion and submit that the said proceedings was suspended by the Tribunal in its order dated 6.10.2005. According to the learned Senior Counsel, except in Memo dated 4.10.2005, all the other government orders, the clarifications issued by the Commissioner and the proceedings of the district educational officers, would show that the single subject certificate holders in english from Dr.B.R. Ambedkar University were eligible to be considered for promotion to the post of school assistants (english). Learned Senior Counsel would submit that Andhra University and other Universities had been granting such certificates for the past several years, to enable persons to equip themselves to perform better, and contend that since the respondents were several years seniors to the writ petitioners, the certificate in english, from the Dr. B.R. Ambedkar University, must be treated as an equivalent qualification to a bachelor's degree in english, enabling them to be included in the seniority list and for being considered for promotion to the post of school assistant (english). Learned Senior counsel would submit that there were two sets of orders or rules, one for secondary grade teachers to be promoted as school assistants (english) and another set whereby even single subject certificate holders in english from the Dr.B.R. Ambedkar Open University were being considered for appointment, by way of direct recruitment, to the post of school assistants (english).

Learned Senior counsel would submit that teachers, with degrees in graduation, B.Ed. and the single subject certificate from the Dr.B.R. Ambedkar Open University, could be further classified thus:- (1) those who were already appointed and regularized by 2002 (1500 teachers), (2) those who were exempted from the operation of the Rules in G.O.Ms.No.136, dated 30.11.2003, by proceedings of the Commissioner dated 5.2.2004 for DSC – 2003, (3) those who had been appointed by direct recruitment for DSC 2003 and were granted relaxation from the rigour of the rules with a rider that they should obtain the prescribed qualification in five years; (4) those who were now disqualified under the memo dated 4.10.2005 which was suspended by the Tribunal and were directed to be considered for promotion to the post of school assistants; and (5) others, who though not falling under any of the

aforementioned categories were senior to them. According to the learned Senior Counsel, all the earlier proceedings issued by the Commissioner, from time to time, were with the concurrence of the government and it was the consistent stand of the government in the earlier counter affidavit filed before the Tribunal on 01-11-2002 that the single subject certificate holders in english were eligible to be appointed to the post of school assistants (english). He would rely on **Banarsidas v. State of Uttar Pradesh; Commissioner, Corporation of Madras v. Madras Corporation Teachers' Mandram; V.K. Sood v. Secy., Civil Aviation; J. Ranga Swamy v. Govt. of Andhra Pradesh; Mohd. Shujat Ali v. Union of India and State of Gujarat v. Raman Lal Keshav Lal Soni.** Learned Senior Counsel would submit that it was not for to this court to adjudicate the validity of government orders prescribing qualifications for a post as these were matters within the exclusive domain of the employer, that the State must be held to violate Articles 14 and 16 of the Constitution when it imposes different eligibility criteria for one set of employees (direct recruits) and another for a different set of employees (promotees); that the vested rights of the respondents to be considered for promotion cannot be taken away; that by earlier promoting and regularizing more than 1500 single subject certificate holders in english as school assistants (english), the legal and factual position of the State had crystallized and the State could not be allowed to resile therefrom as it would then amount to a capricious and arbitrary act which was anathema to Articles 14 and 16 of the Constitution of India, that the said action is self-contradictory and that providing two sets of rules, prescribing different qualifications for appointment for the very same post of school assistants (english) was discriminatory. Learned Senior Counsel would submit that the human problem involved should be taken into consideration by this Court while exercising its discretionary jurisdiction. He would rely on **University of Mysore Vs. C.D. Govind Rao** and **B.V. Reddy Vs. Union of India**, in support of his contention that Courts are neither equipped to adjudicate academic issues of a technical nature nor do they have the expertise to determine equivalence of educational qualifications and that executive decisions in such matters should not be interfered with. He would submit that in view of the past practice, the respondents had the legitimate expectation, that the single subject certificate in english obtained by them from the Dr. B.R. Ambedkar University, would be accepted as the qualification for appointment to the post of school assistants (english). Learned Senior Counsel would rely on **M.P. Oil Extraction v. State of M.P; National Buildings Corporation v. S. Raghunandan; and U.P. Awas Evam**

Vikas Parishad v. Gyan Devi. Learned Senior Counsel would submit that the State government was precluded from contending otherwise on the ground of promissory estoppel and would rely on **Century Spinnig & Manufacturing Co. Ltd., Vs. The Ulhasnagar Municipal Council** and **Motilal Padampat Sugar Mills Co. Ltd Vs. State of U.P**..

Sri J.R. Manohar Rao, learned counsel for some of the respondents, would submit that in **M. Kesavulu**[1] this Court had struck down the rules notified in G.O.Ms.No.538 dated 20.11.1998 and had directed that the earlier rules in G.O.Ms.No.278 dated 20.6.1983 would apply. Learned Counsel would contend that since the rules in G.O.Ms.No.278 dated 20.6.1983 did not prescribe degree in english, (either as a main or optional subject), as the prescribed qualification, the respondents in the writ petition could not be denied appointment to the post of school assistants (english). Learned counsel would submit that as the earlier rules had been struck down, and in the absence of any statutory rules governing the field, executive instructions/administrative orders issued by the government and its officials, from time to time, were valid and in accordance therewith candidates who had obtained the single subject certificate in english from the Dr.B.R. Ambedkar Open University were qualified to be promoted to the post of school assistants (english). Learned counsel would submit that while the qualification of a degree in english had been relaxed while making appointments by direct recruitment, the rules were being strictly adhered to while effecting promotions to the post of school assistants (english). According to the learned counsel 30% of the posts of school assistants are required to be filled by direct recruitment and 70% by promotion and prescribing different criteria for appointment to the same post of school assistants (english) was discriminatory. Learned counsel would submit that in view of the subsequent events, the order of the Tribunal in O.A.No.9847 of 2002 and batch dated 4.12.2002 had become infructuous and it was not necessary for this court to examine the order of the Tribunal or take note of the statutory provisions in the light of subsequent events. Learned counsel would submit that the validity or otherwise of the statutory rules, in G.O.Ms.No.96 dated 25.7.2005, and as to whether the single subject certificate in english was a qualification equivalent to a bachelors degree in english, (either main or one of the optional subjects), was a matter which should be left to be examined by the Tribunal. Learned counsel would place before this court one of the certificates issued by the Andhra University wherein the single subject course in english, which

a candidate had undergone long after he had completed his graduation, had been subsequently included as part of the degree. According to the learned Counsel, since the single subject course in english had been subsequently inserted in the degree, it would satisfy the requirement of the rules and merely because a similar course offered by Dr.B.R. Ambedkar Open University was not included in the degree, was no reason to deny similar treatment.

Learned Government Pleader, appearing on behalf of the learned Advocate General, while supporting the case of the petitioners, would refer to Section 12(3) of the University Grants Commission Act and various provisions of the A.P. Universities Act to submit that it is only if a candidate has obtained a degree in english, either as the main or one of the three optional subjects would he be entitled for being considered for promotion to the post of school assistants (english). Learned government pleader would fairly concede that the Commissioner had no authority to issue any clarification contrary to the statutory rules. According to the learned government pleader, it is only in cases where the statutory rules prescribe a particular qualification or its equivalent, would it open be to the authorities to determine the equivalence and since the statutory rules governing promotion/recruitment to the post of school assistants (english) do not so provide and have specifically prescribed graduation with english, as the qualification for being considered for appointment to the post of school assistant (english), the statutory rules can neither be relaxed nor are the authorities competent to hold that the single subject certificate in english, issued either by Dr. B.R. Ambedkar Open University or any other University, was an equivalent qualification. Learned government pleader would refer to the memo No.18103/jSer.VI01/2005 dated 3.10.2005 and submit that the certificates issued by the Dr.B.R. Ambedkar Open University would not render candidates, who had obtained such certificates, eligible for promotion to the post of school assistants (english). In so far as the degree awarded by the Andhra University is concerned, learned government pleader would place before this court a note from the Vice-chancellor, Andhra University which reads thus:

“1. The School of Distance education has been offering B.A./B.Com./B.Sc. Degree Course with select combinations of subjects. Of late, there has been demand from students to permit them to study additional optional subject(s) after graduating from the University.

2. As per the existing regulations, they have to study the additional optional subject(s) for another 3 years and take the examination in Paper-I in the First year, Paper-II in the Second year and Papers-III and IV in the Third year. It may be desirable that they may be permitted to study the Four papers in the selected optional and appear for the examination in one year after their admission in the school.

3. However, if any student opts more than one additional optional subjects in addition to the three optional subjects that he/she already passed, he/she may be allowed to be admitted in 1st year only and appear for the examinations along wit other students admitted in the B.A. I year. He/She may be permitted to appear 2nd and 3rd years with a gap of one year each, thereafter.

4. Students opting for one additional subject may be admitted into III year of the respective Course after collecting the total fee for the year i.e. Rs.1150/- as 1st installment and Rs.450/- as 2nd Installment. The regulations and syllabi that are existing may be made applicable to these candidates. The additional subjects that they will be passing now may be incorporated in the Provisional Certificates already issued as per the existing practice."

It is clear from the said note that the additional subjects, which a candidate has undergone after completion of his graduation, are subsequently incorporated/inserted in the degree previously issued by the Andhra University.

Prior to the coming into force of the rules, in G.O.Ms.No. 538 dated 20.11.1998, the post of school assistant was not categorized subjectwise. The rules in G.O.Ms.No. 40 dated 07.02.1992 and G.O.Ms.No. 538 dated 20.11.1998 empowered the authorities to determine equivalence of the prescribed qualification. While the rules in G.O.Ms.No. 538 dated 20.11.1998 categorised school assistants into (1) school assistants (maths); (2). school assistants (science) and (3). school assistants (social studies), the rules, as amended in G.O.Ms.No. 49 dated 14.05.2002 further classified school assistants to five categories i.e. (1) school assistants (maths); (2) school assistants (physical science); (3) school assistants (biological science); (4) school assistants (social studies) and (5) school assistants (english). Prior to the rules in G.O.Ms.No. 72 dated 03.07.2000 there was one common set of rules both for promotion and direct recruitment. It was for the first time by way of the "A.P. Direct Recruitment of Teachers (Scheme of Selection) Rules, 2000", as notified in G.O.Ms.No. 72 dated 03.07.2000, that separate rules were made for direct recruitment to all categories of teachers in government, zilla parishad and mandal parishads schools.

Consequent upon the rules, in G.O.Ms.No. 538 dated 20.11.1998, being declared ultra vires by this Court in W.P.No.11325/2000 and batch dated

18.09.2003, in so far as promotion to the post of school assistant is concerned, there were no rules governing the field till the present set of rules in G.O.Ms.No. 96 dated 25.07.2005 were made. Further this Court, in W.P.No. 11325 of 2000 and batch dated 18.09.2003, while declaring G.O.Ms.No. 538 dated 26.11.1998 ultra vires restored the rules framed earlier in G.O.Ms.No. 278 dated 20.06.1983. As such till the present statutory rules were made and notified in G.O.Ms.No. 96 dated 25.07.2005, in so far as promotions to the post of school assistant (english) is concerned, the rules notified in G.O.Ms.No. 278 dated 20.06.1983 and the executive instructions/administrative circulars issued, in exercise of the power under Article 162 of the Constitution of India, governed the field.

In so far as direct recruitment, to the post of school assistant (english) is concerned, the statutory rules in G.O.Ms.No. 72 dated 03.07.2000 as amended in G.O.Ms.No. 136 dated 13.11.2003 were applicable till the rules in G.O.Ms.No. 96 dated 25.07.2005 came into force. Unlike the earlier rules in G.O.Ms.No. 278 dated 20.06.1983 or in G.O.Ms.No. 40 dated 07.02.1992, neither the rules in G.O.Ms.No. 72 dated 03.07.2000 as amended by the rules in G.O.Ms.No. 136 dated 13.11.2003 nor the present rules in G.O.Ms.No. 96 dated 25.07.2005 empower the authorities to determine any other qualification as equivalent to those prescribed under the rules. Under the rules in G.O.Ms.No. 96 dated 25.07.2005 it is only those candidates who possess a bachelors degree with english as the main subject or one of the optional subjects or a post graduate degree in english who alone are eligible for being considered for appointment to the posts of school assistants (english) either by direct recruitment or by promotion. In the absence of any provision in the statutory rules enabling them to determine equivalence of educational qualifications, it was not open to the authorities to treat any other qualifications as equivalent to a bachelors degree with english as the main subject or one of the optional subjects. It is settled law that while executive instructions, under Article 162 of the Constitution of India, can supplement statutory rules, such instructions cannot supplant the statutory rules in force. The executive must abide by the statutory rules and cannot, in exercise of the executive power under Article 162 of the Constitution of India, ignore or act contrary thereto (**B.N. Nagarajan Vs. State of Mysore**; **Sant Ram Sharma Vs. State of Rajasthan** a n d **N.T. Devin Katti Vs. Karnataka Public Service Commission**).

It is no doubt true that the rules notified in G.O.Ms.No.96 dated 25.7.2005 is

subsequent to the order of the Tribunal in O.A.No.9635/02 and batch dated 4.12.2002. The fact however remains that in several O.As, filed subsequent to the rules in G.O.Ms.No.96 dated 25.7.2005, having come into force, interim orders were passed by the Tribunal to the effect that those candidates, who possess the single subject certificate in english from Dr. B.R. Ambedkar Open University, shall be considered in terms of the judgment in O.A.No.9635 of 2002 dated 4.12.2002. The contention that the writ petitions have become infructuous and no orders need be passed in the present batch of writ petitions cannot, therefore, be accepted.

When O.A.9635 of 2002 and batch came to be dismissed by the Tribunal on 4.12.2002, the relevant rules governing the field were those in G.O.Ms.No.538 dated 20.11.1998 as amended by G.O.Ms.No.49 dated 14.5.2002 whereunder the qualification prescribed, for appointment to the post of school assistant (english), was that of a bachelors degree with english as the main subject or one of the optional subjects. The rules neither prescribed any qualification as being equivalent thereto nor did it empower the authorities concerned to prescribe any other qualification as being equivalent to the qualification of a bachelors degree in english. The clarification issued by the then Commissioner on 12.10.2002, that candidates who had obtained the single subject certificate in english from Dr.B.R. Ambedkar Open University would also be considered for promotion was upheld by the Tribunal, which took upon itself the task of determining the equivalence of educational qualifications.

The Tribunal went into the scheme of examination, the system of study of Dr. B.R. Ambedkar Open University, made a detailed analysis of the single subject certificate course in english which consisted of four papers and thereafter held that these candidates could not be discriminated against in the matter of promotion to the post of school assistants (english), that they satisfied the rules framed and were legitimately entitled to be appointed to the post of school assistant (english). The Tribunal also held that the single subject certificate course in english was offered only to those who had already completed their graduation and as such the single subject course was an additional qualification. Since the statutory rules, which were then in force i.e., G.O.Ms.No.538 dated 26.11.1998 as amended by G.O.Ms.No. 49 dated 14.05.2002, prescribed a degree in english, either as the main subject or one of the optional subjects, as the qualification for appointment by promotion to the post of school assistant (english), possessing a degree in any other subject did not

satisfy the requirement of the rules and was of no consequence.

The Tribunal ought not to have embarked upon an elaborate enquiry or conducted a detailed analysis to determine as to whether the single subject certificate course in english offered by the Dr. B.R. Ambedkar Open University was equivalent to that of a bachelors degree in english as it is well settled that courts/tribunals do not have the necessary expertise in such matters. It is for the rule making authority to determine the method of recruitment and to prescribe the qualifications. It is not in the province of the Courts/Tribunals to trench into and prescribe qualifications for posts (**V.K. Sood**[4]).

Now the Judgments cited. In **Banarsidas**[2] the Supreme Court held thus:-

"…… In our opinion, it is open to the appointing authority to lay down the requisite qualifications for recruitment to Government service and it is open to that authority to lay down such prerequisite conditions of appointment as would be conducive to the maintenance of proper discipline amongst Government servants……Article 16 of the Constitution is an instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government. Like all other employers, Government are also entitled to pick and choose from amongst a large number of candidates offering themselves for employment under the Government."

In **C.D. Govinda Rao**[8] the Supreme Court held:-

"…….In dealing with the case presented before it by the respondent, the High Court has criticised the report made by the Board and has observed that the circumstances disclosed by the report made it difficult for the High Court to treat the recommendations made by the expert with the respect that they generally deserve. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions on academic matters to experts who are more familiar with the problems they face than the courts generally can be……"

In **B.V. Reddy**[9], the Full Bench of this Court held thus:

"……We have set out the reasons that weighed with the Government in coming to the conclusions that the two sets of qualifications cannot be treated as equal. The matter was

reviewed by the Government of India and the opinion expressed by the latter is that the time taken by a U.S. or O.C.E. certificate holder to become an Asstt. Engineer is practically the same as the time taken by a diploma holder of the L.C.E., L.M.E. etc. qualifications. The State Government had accepted the recommendations of experts many of whom were persons engaged in teaching and were conversant with the educational standards implicit in the several courses of training. The decision is one manifestly borne out by the recommendation of expert bodies. In a matter of this description it is not the function of the courts to sit in judgment over the executive decision especially one entrenched in expert testimony. We have not been shown any reason for holding that the principle laid down by the Supreme Court in **University of Mysore v. C.D. Govinda Rao:** AIR 1965 SC 491 is in any manner inapplicable to the facts of the present case. The principle acted upon is that it would not be proper for the Court to differ from the opinion of an educational Board on an academic matter. Courts would naturally hesitate to express an opinion contrary to the one accepted by Government when it appears that a Board of experts was satisfied about the validity of the standard applied by the Government."

In **Mohd. Shujat Ali**[6] the Supreme Court held:-

"……. It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government……"

In **J. Ranga Swamy**[5] the Supreme Court held thus:-

"……It is not for the court to consider the relevance of qualifications prescribed for various posts. The post in question is that of a Professor and the prescription of a doctorate as a necessary qualification therefor is nothing unusual. Petitioner also stated before us that, to the best of his knowledge, there is no doctorate course anywhere in India in radiological physics. That is perhaps why a doctorate in nuclear physics has been prescribed. There is nothing prima facie preposterous about this requirement. It is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed for the post in question. It will be open to the petitioner, if so advised, to move the college, university, government, Indian Medical Council or other appropriate authorities for a review of the prescribed qualifications and we hope that, if a doctorate in nuclear physics is so absolutely irrelevant for the post in question as is sought to be made out by the petitioner, the authorities concerned will take expeditious steps to revise the necessary qualifications

needed for the post appropriately. But, on the qualifications as they stand today, the petitioner is not eligible to the post and cannot legitimately complain against his non-selection……"

It is clear from the aforesaid judgments that the relevance of qualifications prescribed for various posts and the question regarding equivalence of educational qualifications, are technical issues to be determined on a proper assessment and evaluation of the academic standards and practical attainment of such qualifications. Since Courts/Tribunals do not have the necessary expertise or wherewithal, they should, normally, defer to the wisdom of the executive in such matters.

The Tribunal also upheld the action of the Commissioner in issuing a clarification to the statutory rules holding that as the head of the department he was entitled to issue such a clarification. In the absence of the statutory rules empowering the Commissioner to prescribe any other qualification as being equivalent to the qualification of a degree in english, his action in issuing clarifications to the statutory rules was without authority of law and, in effect, supplanted the statutory rules by way of administrative orders. In any event, the clarification issued by the Commissioner is clearly erroneous, since admittedly, (letter of the University dated 13.11.2003), the certificate in the single subject of english given by the Dr.B.R. Ambedkar Open University is not even a degree, let alone a degree with english as the main or one of the optional subjects.

The subsequent event of the rules in G.O.Ms.No.538 dated 26.11.1998, as amended from time to time, being declared ultra vires by this Court in W.P.No.11325 of 2005 and batch dated 18.9.2003 would, however, have a significant bearing on the selections held during this period. Once the rules have been declared ultra vires, there were no other statutory rules governing the field, and in such circumstances, administrative instructions issued by the government or the competent authorities, could form the basis for considering candidates for promotion to the post of school assistants (english). It is well settled that it is not obligatory to make statutory rules before a post can be filled as the State government has the executive power, in relation to all matters with respect to which the legislature of the State has the power, to make laws. In the absence of statutory rules governing the field, promotions can be effected on the basis of executive instructions issued under Article 162 of the Constitution of India (**B.N.Nagarajan**[15]). While the government cannot amend or supersede statutory rules by administrative instructions, in the absence of any rule or

where the rules are silent on any point, the government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. (**Sant Ram Sharma**[16]).

This Court, in W.P.No. 11325 of 2000 and batch dated 18.09.2003, while declaring the rules in G.O.Ms.No.538 dated 20.11.1998 ultra vires, restored the rules made under G.O.Ms.No.298 dated 20.6.1983 which merely prescribe the method of recruitment and qualification to the post of school assistants without further classifying the said post subject-wise. The said rules prescribed B.A, B.Sc or B.O.L. of a university for appointment to the post of school assistant, otherwise than by direct recruitment. Thus any graduate, not necessarily a graduate with english as the main or one of the optional subject, was eligible to be considered for promotion to the post of school assistant. Till the statutory rules, in G.O.Ms.No.96 dated 25.07.2005, came into force, promotion of such secondary grade teachers, who though did not possess a bachelors degree in english, but were graduates in other subjects and had undergone the single subject certificate course in english from the Dr.B.R. Ambedkar Open University, cannot be faulted. Since the present rules, notified in G.O.Ms.No.96 dated 25.7.2005, prescribe a degree in english, as the qualification for promotion to the post of school assistants (english), the executive power under Article 162 of the Constitution of India cannot be exercised contrary thereto. The earlier administrative instructions or circulars which provided that the single subject certificate in english from Dr.B.R. Ambedkar Open University was also a qualification for promotion to the post of school assistant (English), being contrary to the statutory rules in G.O.Ms.No.96 dated 25.7.2005, must necessarily yield and can no longer be relied upon to contend that even the single subject certificate holders are entitled for being considered for promotion to the post of school assistant (english).

Sri S. Ramachandra Rao, learned Senior Counsel would place reliance on the afore-extracted judgments of the Supreme Court, (**Banarsidas**[2]**, Mohd. Shujat Ali**[6] **and Raman Lal Keshav Lal Soni**[7]), to contend that since these are all matters in the executive realm and since the Commissioner and the Government have held that single subject in english certificate holders were eligible for promotion to the post of school assistants (english) it was not open for this Court, under Article 226 of

the Constitution of India, to determine the equivalence of educational qualifications. Unlike the Tribunal, in O.A.No.9635/02 and batch dated 4.12.2002, we have not undertaken any such exercise to determine whether the single subject certificate course in English, as offered by the Dr. B.R. Ambedkar Open University, is equivalent to a bachelors degree in english. What all we have held is that the executive power under Article 162 of the Constitution of India can be exercised only to supplement statutory rules and not to supplant them. Since the statutory rules governing the field prescribe a degree in english, as the main or one of the optional subjects, as the educational qualification, and do not empower the authorities to prescribe any other qualification as being equivalent thereto, the several clarifications/administrative instructions/circulars issued by the authorities, from time to time, which run contrary to the statutory rules are ultra vires and illegal. To illustrate, the rules in G.O.Ms.No. 40 dated 07.02.1992 prescribe a bachelors degree in any subject and a B.Ed degree from a University **or an equivalent qualification**, (emphasis supplied), as the required qualification for appointment to the post of school assistants. Since the rules provided for an equivalent qualification, amongst the qualifications prescribed, the competent authorities had the power to prescribe any particular qualification as an equivalent qualification. Unlike the rules in G.O.Ms.No. 40 dated 07.02.1992, neither the rules in G.O.Ms.No. 538 dated 26.11.1998 as amended in G.O.Ms.No. 49 dated 14.05.2002 nor the rules in G.O.Ms.No. 96 dated 25.07.2005 provide for any other equivalent qualification. It was therefore not open to either the Commissioner or the government to prescribe the single subject certificate course in english, from the Dr.B.R. Ambedkar Open University, as a qualification equivalent to a bachelors degree in English literature. We make it clear that we are not examining the constitutional validity of the statutory rules notified in G.O.Ms.No.96 dated 25.7.2005, since its validity is required to be examined in the first instance by the Tribunal. There is however a presumption regarding the constitutionality of the rules, (**M.L.Kamra v. New India Assurance Co. Ltd**), and as long as these statutory rules remain in force, (till they are either repealed or substituted by subsequent rules or are struck down by courts/tribunals), they must be followed and cannot be deviated from.

Now the plea of discrimination:-

The contention of Sri S. Ramachandra Rao, learned Senior Counsel is that while the rigour of the rules have been relaxed in favour of persons, possessing the single

subject certificate in english as awarded by Dr.B.R. Ambedkar Open University, for direct recruitment to the post of school assistant (english), similar concession was not accorded to candidates seeking promotion to the post of school assistants (english). Learned Senior Counsel would also contend that the vested right of the respondents, to have the single subject certificate in english issued by Dr. B.R. Ambedkar Open University being treated as equivalent to a degree in english, cannot be taken away retrospectively by the statutory rules in G.O.Ms.No.96 dated 25.7.2005. Learned senior counsel would place reliance on **Raman Lal Keshav Lal Soni**[7] wherein the Supreme Court held thus:-

"……..Nor was it permissible to single them out for differential treatment. That would offend Article 14 of the Constitution. An attempt was made to justify the purported differentiation on the basis of history and ancestry, as it were. It was said that Talatis and Kotwals who became Secretaries, Officers and servants of Gram and Nagar Panchayats were government servants, even to start with, while municipal employees who became such Secretaries, Officers and servants of Gram and Nagar Panchayats were not. Each carried the mark or the "brand" of his origin and a classification on the basis of the source from which they came into the service, it was claimed, was permissible. We are clear that it is not. Once they had joined the common stream of service to perform the same duties, it is clearly not permissible to make any classification on the basis of their origin. Such a classification would be unreasonable and entirely irrelevant to the object sought to be achieved. It is to navigate around these two obstacles of Article 311 and Article 14 that the Amending Act is sought to be made retrospective, to bring about an artificial situation as if the erstwhile municipal employees never became members of a service under the State. Can a law be made to destroy today's accrued constitutional rights by artificially reverting to a situation which existed 17 years ago? No."

" The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today……."

A statutory rule which prescribes the eligibility criteria for promotion to a higher post undoubtedly operates on those who have entered service before the framing of the rules but it operates in future, in the sense that it governs the future right of promotion of those who are already in service and does not recall a promotion already made (**State of Jammu & Kashmir v. Triloki Nath Khosa**) . It cannot, therefore, be contended that the vested rights of the respondents have been taken away by the

statutory rules inasmuch as only promotions effected subsequent to the coming into force of the rules would be governed by these rules and not those effected prior thereto. The averment in the counter affidavit filed before the Tribunal on 1.11.2002 would not preclude the rule making authority from making rules prescribing a different qualification for the purpose of promotion to the post of school assistants (english). The rights and obligations of a government servant are determined by statutory rules which may be framed and altered unilaterally by the government. No government servant has any vested contractual right in regard to the terms of his service. (**Roshanlal Tandon v. Union of India**). The government, in its wisdom, can always change its policies and, for the purpose of promotion, can prescribe qualifications different from the one in existence earlier. In any event, the averments in the said counter affidavit merely reflect the understanding of the deponent/authorities concerned regarding the effect of statutory rules and such an understanding is not binding on Courts/Tribunals on whom is cast the duty to interpret statutory provisions. The contention that the legal and factual position of the State has crystalised, disentitling the State from resiling from such a position, cannot therefore be accepted.

G.O.Ms.No.96 dated 25.7.2005, applies prospectively to promotions effected after the rules have come into force. Appointment of persons prior to the coming to force of these statutory rules, cannot be set at naught on the ground that the appointees do not possess the qualification prescribed under these statutory rules. However persons who seek promotion to the post of school assistants (english) after coming into force of the rules, in G.O.Ms.No.96 dated 25.7.2005, cannot claim to have any vested right to be considered for promotion on the basis of the single subject certificate in english awarded by the Dr.B.R. Ambedkar Open University, as no employee has the right, much less a vested right, to be promoted contrary to the statutory rules.

In **Chandigarh Admn. v. Jagjit Singh** the Supreme Court held:

"**……**We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has

to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course — barring exceptional situations — would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world……..”

The statutory rules, governing both direct recruitment and promotion, at the time when O.A.No.9635 of 2002 and batch were filed and as at present, prescribe a degree in english as the qualification required for being considered for promotion to the post of school assistant (english). The contention that two self-contradictory and different sets of rules are in operation is therefore wholly misconceived. What has however been done is to relax, by way of administrative instructions, the rigour of the rules in the case of direct recruitment while not providing for such relaxation in the case of promotions. Since issuance of administrative instructions/clarificatory

memos granting such relaxation, run contrary to the statutory rules governing the field, the validity of the relaxation granted, while making appointments by direct recruitment, is itself doubtful. No reliance can be placed by the secondary grade teachers on such government orders/clarificatory memos, to contend that they should also be given similar benefits even if such relaxation is contrary to the statutory rules in force. Since the relaxation granted in favour of the direct recruits is contrary to law, such illegality cannot be made the basis of issuing an order compelling the authorities concerned to repeat the illegality. While the illegal action can be corrected in accordance with law, it cannot be made the basis for its repetition. As held in **Jagjit Sing**[21], giving effect to such pleas would be prejudicial to the interests of law and cause incalculable harm and mischief to public interest. It would be a complete negation of the rule of law.

While the earlier statutory rules governing direct recruitment to the post of school assistants (english), also prescribed a bachelors degree in english, as the qualification, the rigour of the rules were relaxed by way of administrative instructions. The rigour of the present rules in G.O.Ms.No.96 dated 25.7.2005 have again been relaxed, vide G.O.Rt.No.556 dated 4.10.2005, for direct recruitment in DSC 2003. As stated above, since the executive power under Article 162 cannot be exercised to supplant statutory rules, validity of the relaxation granted in favour of candidates possessing the single subject certificate in english from Dr. B.R. Ambedkar Open University, is highly doubtful. This question cannot however be examined in the present batch of writ petitions, as none of the persons who were appointed by direct recruitment are before this court, nor are the parties in the present writ petition seeking to have such appointments made by way of direct recruitment set aside. In any event, the illegality in providing relaxation in favour of the direct recruits does not entitle the respondents herein to claim that the illegality should be perpetuated and that they should also be given the benefit of such relaxation for promotion to the posts of school assistants (english). The plea of discrimination must therefore fail.

Estoppel and legitimate expectation.

The doctrine of “legitimate expectation” operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right. (**M.P. Oil Extraction**[10]). The doctrine of “legitimate expectation” can be invoked if the decision

which is challenged in the court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn. The question whether the expectation and the claim is reasonable or legitimate is a question of fact in each case and has to be determined not according to the claimants' perception but in larger public interest. (**S. Raghunathan**[11]).

While it is true that existence of a regular practice which the claimant can reasonably expect to continue would give rise to a legitimate expectation, this doctrine will not apply where there is a change in policy or in public interest the position is altered by a statutory rule or legislation. (**Madras City Wine Merchants' Association v. State of Tamil Nadu**). The choice of policy is for the decision maker and not for the court and legitimate substantive expectation merely permits the court to find out if the change in policy, which is the cause for defeating the legitimate expectation, is irrational or perverse or one which no reasonable person could have made. Change in policy can defeat a substantive legitimate expectation if it can be justified on the ground of reasonableness (**Punjab Communications Ltd. V. Union of India**).

Pursuant to the statutory rules, in G.O.Ms.No.538, dated 20.11.1998 being declared ultra vires by this court, the administrative instructions issued by the government/competent authorities, from time to time, entitled the single subject certificate holders in english from Dr. B.R. Ambedkar Open University to be considered for promotion to the post of school assistants (english). This position was altered by the statutory rules in G.O.Ms.No.96 dated 25.7.2005. The alteration in position by these statutory rules would disentitle any claim of legitimate expectation. The prescription in the rules of person possessing a bachelors degree in english for being appointed as school assistant (english), cannot be said to be irrational or perverse or one which no reasonable person could have made, for school assistants (english) are required to teach english to students from Classes VIII to X. Graduates

in English literature would undoubtedly be better suited, than other graduates, to teach english to students at the higher secondary level.

Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contracts by a person who acts upon the promise. (**Century Spg. and Mfg. Co. Ltd.[13]**). The doctrine of estoppel cannot however be invoked to prevent the government from discharging its duty under the law nor can it be applied in the teeth of an obligation or liability imposed by the law (**Motilal Padampat Sugar Mills Co. Ltd.[14]**).

In **Vasantkumar Radhakisan Vora v. Board of Trustees of the Port of Bombay,** the Supreme Court held:-

"It is equally settled law that the promissory estoppel cannot be used to compel the government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the government or the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the government or public authority, for having regard to the facts as they have transpired that it would be inequitable to hold the government or public authority to the promise or representation made by it. The court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against government or the public authority. Equally promissory estoppel should not be extended, though it may be founded on an express or implied promise stemmed from the conduct or representation by an officer of the State or public authority when it was obtained to play fraud on the Constitution and the enforcement would defeat or tend to defeat the constitutional goals. ……Though executive necessity is not always a good defence, this doctrine cannot be extended to legislative acts or to acts prohibited by the statute"

As held in **Vasantkumar Radhakisan Vora[24]** promissory estoppel cannot be used to compel the government to carry out a representation prohibited by law. Since the action of the government in refusing to consider candidates, possessing the single subject certificate in english from Dr.B.R. Ambedkar Open University, for promotion to the post of school assistants (english), is in accordance with the statutory rules in G.O.Ms.No.96 dated 25.7.2005, the estoppel/promissory estoppel

doctrine has no application.

The plea of estoppel and legitimate expectation is therefore rejected.

Before parting with the case, there is one other contention which needs to be considered. The qualification prescribed under the statutory rules, in G.O.Ms.No.96 dated 25.7.2005, is a degree with english as the main subject or one of the optional subjects. Sri J.R. Manohar Rao, learned counsel for some of the respondents, placed before us a bachelors degree awarded by the Andhra University wherein the single subject course in english, undergone by a candidate, subsequent to completion of his graduation, was inserted as part of his bachelors degree. It could therefore be argued that inclusion of the single subject english course as part of the degree, would satisfy the requirement of the statutory rules. These are all matters which all required to be examined by experts. Questions relating to the subsequent inclusion of english in the degrees awarded by the Andhra University satisfying the requirement of statutory rules, whether the syllabus prescribed for the single subject certificate course in english offered by the Dr. B.R. Ambedkar Open University is equivalent to or higher in standard than that of the Andhra University, are all matters which must be left to be examined by experts in the field. The first respondent State government is directed to constitute a committee of expert academicians to go into these aspects and on the basis of their recommendations, take further action in the matter. We refrain from issuing any mandamus regarding amendment of the statutory rules, for we are conscious of the self-imposed restrictions of this court, under Article 226 of the Constitution of India, not to issue a mandamus to the rule making authority to make or amend statutory rules in a particular manner. As long as the statutory rules, in G.O.Ms.No.96 dated 25.7.2005, remain in force, persons who do not possess the prescribed qualification are not eligible to be considered for promotion to the post of school assistants (english) and since the single subject certificate in english, awarded by the Dr. B.R. Ambedkar Open University, does not satisfy the qualification requirement as prescribed under the statutory rules in force as on date, persons holding the single subject certificate in english from the Dr. B.R. Ambedkar Open University are not entitled to be considered for promotion to the posts of school assistants (english).

The order of the A.P. Administrative Tribunal dated 04.12.2002 in O.A.No.9635 of

2002 and batch is set aside. The writ petitions are allowed. However, in the circumstances, without costs.

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J. CHELAMESWAR, J

Date: .01.2006.

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RAMESH RANGANATHAN, J

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B/o

ASP/MRKR